

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA 1928

WP(C).No. 34576 of 2006(N)

PETITIONER:

**V.MANIKANDAN,
SREELAKSHMI AUDIOS, MIG 189,
GANDHI NAGAR, ERNAKULAM, KOCHI-20.**

BY ADV. SRI.R.MURALIDHARAN (AROOR)

RESPONDENTS:

- 1. ADDL. SALES TAX OFFICER,
II CIRCLE, COMMERCIAL TAXES, TRIPUNITHURA.**
- 2. DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, ERNAKULAM.**
- 3. DEPUTY COMMISSIONER,
COMMERCIAL TAXES, ERNAKULAM.**
- 4. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, ERNAKULAM.**

BY GOVT.PLEADER SRI.SAJAN JAMES

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

P.R.RAMAN, J.

W.P.(C) NO. 34576 OF 2006

Dated this the 1st day of January, 2007

J U D G M E N T

The petitioner challenges Exhibit P8 order passed by the 2nd respondent, Deputy Commissioner, Appeals granting stay of collection of the balance amount disputed in the appeal on condition to pay 50% of the amount. According to the petitioner he has also produced the assessment orders from the dealer from which he has purchased audio cassettes evidencing the fact that he has paid tax and therefore he is not liable to pay the tax. However, admittedly this order was not produced before the assessing officer and therefore it is a matter for the appellate authority to consider. Being prima facie satisfied, the appellate authority has granted stay on condition to remit 50%. At this stage, it cannot be said that the order passed by the appellate authority imposing a condition to pay 50% of the tax is in any way arbitrary or mechanical way requiring interference by this court. However, the time for payment is extended by two weeks. In the case of penalty by Exhibit P9 order, the 3rd respondent has directed the petitioner to pay 50% of the amount as a condition of

stay of the balance collection.

2. In the light of the discussions as made above, in case ultimately the assessment order is liable to be set aside possibly there may not be any question of imposition of penalty. Considering the factual situation, I feel that the interim order requiring the petitioner to pay 50% of the penalty has been passed in a mechanical way without application of mind. Exhibit P9 order is liable to be set aside and the matter requires to be reconsidered.

3. Considering the fact that the amount involved is only less than Rs.70,000/- I direct that until the disposal of the revision petition by the 3rd respondent, there will be an interim stay of collection of the penalty amount as imposed on him. Exhibit P9 order accordingly will stand modified as above. However since he has availed time for payment of 50% of the amount it is extended by two weeks from today.

Writ petition is allowed to the limited extent as above.

P.R.RAMAN, JUDGE

Rp